

AMENDED IN ASSEMBLY MAY 4, 2016
AMENDED IN ASSEMBLY MARCH 18, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2827

Introduced by Assembly Member Levine

February 19, 2016

~~An act to add Section 17533.75 to the Business and Professions Code, relating to advertising; amend Section 1770 of the Civil Code, relating to unfair competition.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2827, as amended, Levine. Advertising: Made in U.S.A. label: violations: cure.

Existing law prohibits the sale or offering of sale in the state of any merchandise on which merchandise or on its container appears the words “Made in U.S.A.,” “Made in America,” “U.S.A.,” or similar words when the merchandise or any article, unit, or part thereof, has been entirely or substantially made, manufactured, or produced outside of the United States.

~~Existing law establishes the Made in California Program within the Governor’s Office of Business and Economic Development as a public and private collaboration to encourage consumer product awareness and to foster purchases of high-quality products made in this state. Under the program, in order to be eligible to represent that a product is made in this state, a company is required to, among other things, establish that the finished product could lawfully use the “Made in U.S.A.” label under the provisions set forth above.~~

Existing law, the Consumers Legal Remedies Act, makes unlawful certain acts identified as unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods to any consumer.

This bill would include a violation of the “Made in U.S.A.” provisions as an unfair method of competition and unfair or deceptive act or practice under the Consumers Legal Remedies Act.

~~This bill would prohibit a civil action against a person or business that is alleged to have violated the provisions of the “Made in U.S.A.” or “Made in California” statutes unless written notice of the alleged violations is provided and the person or business has not cured the alleged violation within 33 days of receiving the notice.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1770 of the Civil Code is amended to
2 read:
3 1770. (a) The following unfair methods of competition and
4 unfair or deceptive acts or practices undertaken by any person in
5 a transaction intended to result or which results in the sale or lease
6 of goods or services to any consumer are unlawful:
7 (1) Passing off goods or services as those of another.
8 (2) Misrepresenting the source, sponsorship, approval, or
9 certification of goods or services.
10 (3) Misrepresenting the affiliation, connection, or association
11 with, or certification by, another.
12 (4) Using deceptive representations or designations of
13 geographic origin in connection with goods or services.
14 (5) Representing that goods or services have sponsorship,
15 approval, characteristics, ingredients, uses, benefits, or quantities
16 which they do not have or that a person has a sponsorship,
17 approval, status, affiliation, or connection which he or she does
18 not have.
19 (6) Representing that goods are original or new if they have
20 deteriorated unreasonably or are altered, reconditioned, reclaimed,
21 used, or secondhand.

1 (7) Representing that goods or services are of a particular
2 standard, quality, or grade, or that goods are of a particular style
3 or model, if they are of another.

4 (8) Disparaging the goods, services, or business of another by
5 false or misleading representation of fact.

6 (9) Advertising goods or services with intent not to sell them
7 as advertised.

8 (10) Advertising goods or services with intent not to supply
9 reasonably expectable demand, unless the advertisement discloses
10 a limitation of quantity.

11 (11) Advertising furniture without clearly indicating that it is
12 unassembled if that is the case.

13 (12) Advertising the price of unassembled furniture without
14 clearly indicating the assembled price of that furniture if the same
15 furniture is available assembled from the seller.

16 (13) Making false or misleading statements of fact concerning
17 reasons for, existence of, or amounts of price reductions.

18 (14) Representing that a transaction confers or involves rights,
19 remedies, or obligations which it does not have or involve, or
20 which are prohibited by law.

21 (15) Representing that a part, replacement, or repair service is
22 needed when it is not.

23 (16) Representing that the subject of a transaction has been
24 supplied in accordance with a previous representation when it has
25 not.

26 (17) Representing that the consumer will receive a rebate,
27 discount, or other economic benefit, if the earning of the benefit
28 is contingent on an event to occur subsequent to the consummation
29 of the transaction.

30 (18) Misrepresenting the authority of a salesperson,
31 representative, or agent to negotiate the final terms of a transaction
32 with a consumer.

33 (19) Inserting an unconscionable provision in the contract.

34 (20) Advertising that a product is being offered at a specific
35 price plus a specific percentage of that price unless (A) the total
36 price is set forth in the advertisement, which may include, but is
37 not limited to, shelf tags, displays, and media advertising, in a size
38 larger than any other price in that advertisement, and (B) the
39 specific price plus a specific percentage of that price represents a
40 markup from the seller's costs or from the wholesale price of the

1 product. This subdivision shall not apply to in-store advertising
2 by businesses which are open only to members or cooperative
3 organizations organized pursuant to Division 3 (commencing with
4 Section 12000) of Title 1 of the Corporations Code where more
5 than 50 percent of purchases are made at the specific price set forth
6 in the advertisement.

7 (21) Selling or leasing goods in violation of Chapter 4
8 (commencing with Section 1797.8) of Title 1.7.

9 (22) (A) Disseminating an unsolicited prerecorded message by
10 telephone without an unrecorded, natural voice first informing the
11 person answering the telephone of the name of the caller or the
12 organization being represented, and either the address or the
13 telephone number of the caller, and without obtaining the consent
14 of that person to listen to the prerecorded message.

15 (B) This subdivision does not apply to a message disseminated
16 to a business associate, customer, or other person having an
17 established relationship with the person or organization making
18 the call, to a call for the purpose of collecting an existing
19 obligation, or to any call generated at the request of the recipient.

20 (23) (A) The home solicitation, as defined in subdivision (h)
21 of Section 1761, of a consumer who is a senior citizen where a
22 loan is made encumbering the primary residence of that consumer
23 for the purposes of paying for home improvements and where the
24 transaction is part of a pattern or practice in violation of either
25 subsection (h) or (i) of Section 1639 of Title 15 of the United States
26 Code or paragraphs (1), (2), and (4) of subdivision (a) of Section
27 226.34 of Title 12 of the Code of Federal Regulations.

28 (B) A third party shall not be liable under this subdivision unless
29 (1) there was an agency relationship between the party who
30 engaged in home solicitation and the third party or (2) the third
31 party had actual knowledge of, or participated in, the unfair or
32 deceptive transaction. A third party who is a holder in due course
33 under a home solicitation transaction shall not be liable under this
34 subdivision.

35 (24) (A) Charging or receiving an unreasonable fee to prepare,
36 aid, or advise any prospective applicant, applicant, or recipient in
37 the procurement, maintenance, or securing of public social services.

38 (B) For purposes of this paragraph, the following definitions
39 shall apply:

(i) “Public social services” means those activities and functions of state and local government administered or supervised by the State Department of Health Care Services, the State Department of Public Health, or the State Department of Social Services, and involved in providing aid or services, or both, including health care services, and medical assistance, to those persons who, because of their economic circumstances or social condition, are in need of that aid or those services and may benefit from them.

(ii) “Public social services” also includes activities and functions administered or supervised by the United States Department of Veterans Affairs or the California Department of Veterans Affairs involved in providing aid or services, or both, to veterans, including pension benefits.

(iii) “Unreasonable fee” means a fee that is exorbitant and disproportionate to the services performed. Factors to be considered, when appropriate, in determining the reasonableness of a fee, are based on the circumstances existing at the time of the service and shall include, but not be limited to, all of the following:

- (I) The time and effort required.
- (II) The novelty and difficulty of the services.
- (III) The skill required to perform the services.
- (IV) The nature and length of the professional relationship.
- (V) The experience, reputation, and ability of the person providing the services.

(C) This paragraph shall not apply to attorneys licensed to practice law in California, who are subject to the California Rules of Professional Conduct and to the mandatory fee arbitration provisions of Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, when the fees charged or received are for providing representation in administrative agency appeal proceedings or court proceedings for purposes of procuring, maintaining, or securing public social services on behalf of a person or group of persons.

(25) (A) Advertising or promoting any event, presentation, seminar, workshop, or other public gathering regarding veterans’ benefits or entitlements that does not include the following statement in the same type size and font as the term “veteran” or any variation of that term:

(i) “I am not authorized to file an initial application for Veterans’ Aid and Attendance benefits on your behalf, or to represent you

1 before the Board of Veterans' Appeals within the United States
2 Department of Veterans Affairs in any proceeding on any matter,
3 including an application for such benefits. It would be illegal for
4 me to accept a fee for preparing that application on your behalf.”
5 The requirements of this clause do not apply to a person licensed
6 to act as an agent or attorney in proceedings before the Agency of
7 Original Jurisdiction and the Board of Veterans' Appeals within
8 the United States Department of Veterans Affairs when that person
9 is offering those services at the advertised event.

10 (ii) The statement in clause (i) shall also be disseminated, both
11 orally and in writing, at the beginning of any event, presentation,
12 seminar, workshop, or public gathering regarding veterans' benefits
13 or entitlements.

14 (B) Advertising or promoting any event, presentation, seminar,
15 workshop, or other public gathering regarding veterans' benefits
16 or entitlements which is not sponsored by, or affiliated with, the
17 United States Department of Veterans Affairs, the California
18 Department of Veterans Affairs, or any other congressionally
19 chartered or recognized organization of honorably discharged
20 members of the Armed Forces of the United States, or any of their
21 auxiliaries that does not include the following statement, in the
22 same type size and font as the term “veteran” or the variation of
23 that term:

24
25 “This event is not sponsored by, or affiliated with, the United
26 States Department of Veterans Affairs, the California Department
27 of Veterans Affairs, or any other congressionally chartered or
28 recognized organization of honorably discharged members of the
29 Armed Forces of the United States, or any of their auxiliaries.
30 None of the insurance products promoted at this sales event are
31 endorsed by those organizations, all of which offer free advice to
32 veterans about how to qualify and apply for benefits.”

33
34 (i) The statement in this subparagraph shall be disseminated,
35 both orally and in writing, at the beginning of any event,
36 presentation, seminar, workshop, or public gathering regarding
37 veterans' benefits or entitlements.

38 (ii) The requirements of this subparagraph shall not apply in a
39 case where the United States Department of Veterans Affairs, the
40 California Department of Veterans Affairs, or other congressionally

1 chartered or recognized organization of honorably discharged
2 members of the Armed Forces of the United States, or any of their
3 auxiliaries have granted written permission to the advertiser or
4 promoter for the use of its name, symbol, or insignia to advertise
5 or promote the event, presentation, seminar, workshop, or other
6 public gathering.

7 (26) Advertising, offering for sale, or selling a financial product
8 that is illegal under state or federal law, including any cash payment
9 for the assignment to a third party of the consumer's right to receive
10 future pension or veteran's benefits.

11 (27) Representing that a product is made in California by using
12 a Made in California label created pursuant to Section 12098.10
13 of the Government Code, unless the product complies with Section
14 12098.10 of the Government Code.

15 (28) *Representing that a product is made in the United States*
16 *by using "Made in U.S.A.," "Made in America," "U.S.A.," or*
17 *similar words if the merchandise or any article, unit, or part*
18 *thereof, has been entirely or substantially made, manufactured,*
19 *or produced outside of the United States unless the product*
20 *complies with Section 17533.7 of the Business and Professions*
21 *Code.*

22 (b) (1) It is an unfair or deceptive act or practice for a mortgage
23 broker or lender, directly or indirectly, to use a home improvement
24 contractor to negotiate the terms of any loan that is secured,
25 whether in whole or in part, by the residence of the borrower and
26 which is used to finance a home improvement contract or any
27 portion of a home improvement contract. For purposes of this
28 subdivision, "mortgage broker or lender" includes a finance lender
29 licensed pursuant to the California Finance Lenders Law (Division
30 9 (commencing with Section 22000) of the Financial Code), a
31 residential mortgage lender licensed pursuant to the California
32 Residential Mortgage Lending Act (Division 20 (commencing
33 with Section 50000) of the Financial Code), or a real estate broker
34 licensed under the Real Estate Law (Division 4 (commencing with
35 Section 10000) of the Business and Professions Code).

36 (2) This section shall not be construed to either authorize or
37 prohibit a home improvement contractor from referring a consumer
38 to a mortgage broker or lender by this subdivision. However, a
39 home improvement contractor may refer a consumer to a mortgage
40 lender or broker if that referral does not violate Section 7157 of

1 the Business and Professions Code or any other law. A mortgage
2 lender or broker may purchase an executed home improvement
3 contract if that purchase does not violate Section 7157 of the
4 Business and Professions Code or any other law. Nothing in this
5 paragraph shall have any effect on the application of Chapter 1
6 (commencing with Section 1801) of Title 2 to a home improvement
7 transaction or the financing of a home improvement transaction.

8 ~~SECTION 1. Section 17533.75 is added to the Business and~~
9 ~~Professions Code, immediately following Section 17533.7, to read:~~

10 ~~17533.75. (a) Notwithstanding any law, including, but not~~
11 ~~limited to, Section 17200, 17500, or 17533.7, of this code or~~
12 ~~Section 12098.10 or 129098.11 of the Government Code, or the~~
13 ~~Consumers Legal Remedies Act (Title 1.5 (commencing with~~
14 ~~Section 1750) of Part 4 of Division 3 of the Civil Code), a person~~
15 ~~or business may cure an alleged de minimus violation of Section~~
16 ~~17533.7 of this code or Section 12098.10 of the Government Code,~~
17 ~~within 33 days of receiving written notice of the alleged violation.~~
18 ~~The action taken to cure the violation may include, but is not~~
19 ~~limited to, the prospective discontinued use of the words “Made~~
20 ~~in U.S.A.,” “Made in California,” or similar words and phrases as~~
21 ~~set forth in subdivision (a) of Section 17533.7 of this code or~~
22 ~~Section 12098.10 of the Government Code, on any merchandise,~~
23 ~~article, unit, or part thereof.~~

24 ~~(b) Notwithstanding any law, no civil action may be commenced~~
25 ~~under this article, or the Consumers Legal Remedies Act (Title~~
26 ~~1.5 (commencing with Section 1750) of Part 4 of Division 3 of~~
27 ~~the Civil Code), unless the person or business is provided written~~
28 ~~notice of the alleged violation and the person or business has not~~
29 ~~cured the violation within 33 days of receiving the notice.~~